

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA**

**In the Matter of:**

**CLAIMANT,**

**v.**

**CENTRAL VALLEY REGIONAL CENTER**

**OAH No. 2022090024**

**DECISION**

Jessica Wall, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, acted as a hearing officer and heard this matter by videoconference on August 31, 2023, from Sacramento, California.

Claimant's mother represented claimant, who was present at the fair hearing.

Jacqui Molinet, Appeals and Compliance Coordinator, represented Central Valley Regional Center (CVRC).

Evidence was submitted, the record closed, and the matter submitted for decision on August 31, 2023.

## **ISSUE**

Is claimant eligible for regional center services under the Lanterman Act based on a qualifying developmental disability that originated before age 18?

## **FACTUAL FINDINGS**

### **Background**

1. Claimant is a 35-year-old woman. As an infant, she contracted spinal meningitis. The meningitis caused claimant to experience profound, bilateral hearing loss and also impacted her vision and balance. She participated in special education classes from kindergarten through high school and received a high school completion certificate in 2006. She speaks American Sign Language and can lip-read.

### **PRIOR APPLICATION FOR ELIGIBILITY**

2. In 2008, when claimant was 20 years old, her mother applied to CVRC on claimant's behalf for services based on intellectual disability or a disabling condition closely related to an intellectual disability or requiring treatment like that required for individuals with an intellectual disability ("the fifth category"). After performing an intake assessment and ordering a psychological evaluation, CVRC determined that claimant was not eligible for services.

3. Claimant's mother appealed CVRC's eligibility denial. On December 29, 2008, the matter proceeded to a fair hearing in front of ALJ Robert Walker. ALJ Walker considered hearing testimony from a clinical psychologist and an intake manager at CVRC. He also reviewed some of claimant's records from the Fresno Unified School

District and her mental and behavioral health records from 2001 through 2007. He summarized the following evidence:

- In 1996, when claimant was eight years old, she underwent a four-day diagnostic examination. On the Wechsler Intelligence Scale for Children, Third Edition (WISC-III) and Stanford-Binet Intelligence Scale - Fourth Edition, claimant scored in the average and borderline ranges.
- Between 2001 and 2005, claimant treated with David A. Fox, M.D., at the Sullivan Center for Children in Fresno. Dr. Fox diagnosed her with several mental health conditions but not an intellectual disability.
- In January 2006, when claimant was 17 years old, the Fresno Unified School District reviewed claimant's Individualized Education Plan (IEP). The IEP reflected that claimant went from achieving high average grades (A's and C's) to low average grades (C's and F's) due to a loss of focus. Claimant's January 2006 Woodcock Johnson academic achievement test had varied scores, ranging from average to poor.
- In May and August 2007, when claimant was 18 and 19, Stanley F. Littleworth, Ph.D., performed a psychological evaluation of claimant. He diagnosed her with a mood disorder, borderline intellectual functioning (low range), and "rule out" mild intellectual disability.
- In October 2008, when claimant was 20, Errol F. Leifer, Ph.D., performed a neurocognitive assessment and consultation of claimant. He diagnosed her with encephalopathy, cognitive disorder, mental sub-normality, and a mood disorder. He referred to Dr. Littleworth's testing regarding claimant's mental sub-normality and recommended a "rule out" of intellectual disability.

- The following month, in November 2008, Harry Udin, Ph.D., performed a neuropsychological evaluation on claimant for the Department of Rehabilitation. He administered the Wechsler Adult Intelligence Scale-III (WAIS-III) test, on which claimant's scores varied from very low to average. Dr. Udin diagnosed claimant with a cognitive disorder and impulse control disorder, as well as a mild intellectual disability.

4. In his January 2009 decision, ALJ Walker determined claimant did not show she was eligible under the Lanterman Act and denied claimant's appeal. He found that the marked variances in claimant's test scores were inconsistent with an intellectual disability beginning before age 18. There is no record that claimant appealed ALJ Walker's decision to the court of competent jurisdiction. Thus, the 2009 decision is final and binding on the evidence ALJ Walker considered.

### **Current Application for Eligibility**

5. In 2022, claimant's mother provided intake documents to CVRC, seeking for claimant to become eligible for regional center services. CVRC's multidisciplinary team reviewed claimant's documents. Based on that review, CVRC determined that claimant did not show she met the criteria for regional center eligibility. Effective August 5, 2022, CVRC sent claimant a Notice of Proposed Action (NOPA). The NOPA stated CVRC was closing claimant's regional center referral because she had not provided evidence that she had a developmental disability that began before the age of 18.

6. On August 31, 2022, claimant's mother filed a fair hearing request challenging CVRC's eligibility determination. She asserted that claimant is eligible for regional center services due to her developmental delays. The hearing officer

interprets her request as seeking eligibility based on intellectual disability or the fifth category because there was no evidence or argument about cerebral palsy, epilepsy, or autism spectrum disorder (ASD). Claimant's mother wants claimant to be reevaluated for eligibility.

7. CVRC contended that claimant did not provide documentation showing that she had a developmental disability that began before she turned 18. Thus, CVRC declined to complete another assessment to determine her eligibility.

### **RECORDS SUBMITTED AFTER THE NOTICE OF PROPOSED ACTION**

8. In November 2022, after CVRC issued the NOPA, claimant's mother provided the following documents to prove claimant's eligibility. The documents included: (1) a February 2004 multidisciplinary psychoeducational report; (2) a February 2004 speech and language assessment report; (3) a February 2004 deaf and hard-of-hearing assessment report; (4) the 2006 IEP; (5) a November 2008 letter from Lydia Sanchez, M.D.; (6) Dr. Udin's November 2008 report; (7) an August 2012 personal vocational social judgment final report, written by a job developer when claimant was 24 years old; (8) a January 2013 closure report from the Department of Rehabilitation, finding claimant could not benefit from services because of her multiple disabilities; and (9) a June 2021 letter from claimant, titled "CVRC My Serve," indicating her needs.

9. At the hearing, claimant presented several more documents. Those documents included claimant's sixth-grade Stanford Test Report from May 2000, when claimant was 11 years old. She scored below average in all areas, ranging from the first percentile to the 16th percentile. Claimant's California High School Exit Examination (CAHSEE) summary indicated that claimant failed or was absent for ten tests between 2004 and 2006. Her scores on the test subparts ranged from a high of 71 percent to a

low of zero percent. Her math scale score was 325 and her English language arts scale score was 305. The minimum passing score for CAHSEE is 350.

10. Claimant also provided two letters from her former primary care physician, Dr. Sanchez. In April 2002, Dr. Sanchez wrote a letter that claimant had "Sensorineural Hearing loss with ADD and developmental delay," which required full-time supervision. In November 2005, Dr. Sanchez wrote another letter that claimant had "Sensorineural Hearing Loss, Secondary to Meningitis, Mild Developmental Delays and Static Encephalopathy," and still required full-time supervision. Dr. Sanchez added that claimant "needs help with food preparation, cleanliness, hygiene, financial matters and transportation."

11. Claimant's current physician and psychiatrist also wrote letters. In a September 2020 letter, Sandy Serna, M.D., wrote that claimant is "developmentally delayed in addition to being deaf," and requires assistance from another adult to attend medical appointments and with medical decision-making. In August 2022, Dr. Fox wrote a letter about how he has worked with claimant since she was 13 years old. He wrote her "progress has been slow," but "she has made significant gains in social functioning, self-regulation, and anger control since the age of 18." Dr. Fox expressed that claimant now has a clearer sense of self and her disabilities, and she is better able to take advantage of work-related programs.

### **Testimony of Jessica Jones Steed, Ph.D.**

12. Jessica Jones Steed, Ph.D., has worked at CVRC as a staff psychologist for four years. She has a doctorate in forensic psychology and has been licensed by the Board of Psychology since 2012. Dr. Jones Steed has worked in the mental health field for over 25 years, focusing on individuals with developmental disabilities. In her role at

CVRC, Dr. Jones Steed works in the intake unit to assess, diagnose, and consult with applicants, staff, parents, and consumers.

13. Dr. Jones Steed is on the team that makes individual eligibility decisions based on the legal requirements of the Lanterman Act. She reviewed claimant's evidence, as well as the relevant regulations, in finding that claimant is not eligible for regional center services. She testified that an applicant's developmental disability must be one of five eligible conditions listed in the Welfare and Institutions Code and must begin before the applicant turns 18 years old. Conditions that are solely psychiatric disorders, learning disabilities, or physical in nature do not qualify.

14. Here, Dr. Jones Steed reviewed the 2009 decision by ALJ Walker, in which he found claimant did not present evidence showing that she had an intellectual disability or the fifth category condition before age 18. Based on that, CVRC needed claimant to provide new information with her 2022 application that showed she had a qualifying disability before adulthood. CVRC found assessing claimant as a 33-year-old would not provide evidence about claimant's level of functioning before age 18.

15. Claimant's hearing documents did not alter Dr. Jones Steed's opinion. Claimant's 2004 test results placed her in the "low average" range, with scores of 85 and 87. Someone with an intellectual disability would have scored low (70 or less) on all the subtests. Claimant was found eligible for special education based on her hearing impairment and a specific learning disability, not an intellectual disability.

16. Similarly, claimant's letters did not provide Dr. Jones Steed with evidence that claimant was diagnosed with an eligible condition before she was 18 years old. Dr. Fox, who has treated with claimant since she was 13 years old, did not write that claimant had an eligible condition or provide test results that establish such a

condition arose before adulthood. Dr. Jones Steed did not consider Dr. Udin's report because ALJ Walker previously found it insufficient to prove eligibility. In sum, Dr. Jones Steed concluded there was insufficient evidence to qualify claimant for a second eligibility assessment.

## **Claimant's Evidence**

17. Claimant's mother testified at the hearing about how she wants to do everything she can to help claimant. She is not a professional at assessing individuals for disabilities, but she knows that claimant has scored low average on assessments and is behind others in her age group. She tried to secure services for claimant through the Department of Rehabilitation while claimant was still in high school; however, they were unable to help claimant because she has multiple disabilities for which extended services were unavailable. Claimant's mother believes that claimant needs one-on-one assistance every day to succeed.

18. Claimant's mother recalled one instance where she left claimant home alone and claimant allowed the shower water to run for hours because she did not hear the water running. Claimant's mother only allows claimant to use the microwave, fearing she will leave the stove on, and texts claimant safety reminders when she is alone. Claimant cannot drive because she cannot pass the driver's test. Public transportation is too dangerous for claimant because she is both outgoing and trusting. When claimant's mother tried allowing claimant to have a debit card, claimant gave the information away to people who preyed upon her. Now claimant's mother takes care of claimant's finances, including her social security income.

19. According to claimant's mother, claimant has a substantial disability because she has significant functional limitations in multiple areas of major life activity.



Claimant has lived with her mother and stepfather her whole life and needs help to take her medication, perform self-care, function socially, and live independently. While claimant does well on paper and visually, her mother does not think her test scores adequately capture claimant's level of disability. Claimant's mother has tried to teach claimant life skills and worries what will happen to claimant when she is no longer around. She needs help and believes CVRC services will benefit claimant.

20. Bebe Perez has worked with individuals with disabilities for over 20 years. She previously worked at Resources for Independence, Central Valley before starting Boredom Busters Social Events & Travel Excursions in 2018. Ms. Perez has known claimant since 2006, when claimant was 17 years old. In her hearing testimony, she described claimant as a friendly person who struggles with deficits in several areas. Claimant needs one-on-one assistance to help her with conversation skills, boundaries, and staying on task. For example, claimant needs to be prompted to use the restroom or may have an accident. She is able to follow about one or two directions at a time, but no more. Ms. Perez believes that claimant would benefit from CVRC services.

21. Claimant also provided testimony in support of her application. She spoke emotionally about how she needs assistance in multiple areas of her life. She is forgetful and struggles to wake up on time and communicate. She also needs interpreters for appointments because she has difficulty understanding others.

## **Analysis**

22. Claimant presented proof that she underwent several evaluations before turning 18 years old. Those evaluations demonstrated that she has several conditions, including hearing loss and learning disabilities, which qualified her for special education services. Claimant's records also show she has continually scored on the low

average range of the intelligence spectrum. None of the new records claimant provided include a diagnosis of intellectual disability or a closely related disabling condition before the age of 18.

23. Dr. Jones Steed persuasively testified that there is insufficient evidence that claimant suffers from an intellectual disability or a disabling condition that is closely related to or requires treatment similar to that required for individuals with an intellectual disability. She was familiar with the legal criteria CVRC must meet in finding an individual to be eligible for services. Based on her training and experience, her opinion that claimant did not provide enough evidence that she had a qualifying developmental disability before age 18 receives substantial weight.

24. Claimant's mother clearly wants claimant to have the best supportive services for any challenges she may face. However, the legislature did not grant regional centers the authority to provide services to individuals based on whether they would benefit from services. Rather, the legislature limited the regional center's services only to those in the five specified categories of developmental disabilities. Based on the evidence provided, claimant does not qualify for services under the Lanterman Act.

## **LEGAL CONCLUSIONS**

### **The Burden and Standard of Proof**

1. Claimants have the burden of proving that they have at least one of the five qualifying developmental disabilities. The standard of proof required is a preponderance of the evidence. (Evid. Code, § 115.) A preponderance of the evidence

means proving that something is more likely to be true than not true. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## **The Lanterman Act**

2. The State of California accepts responsibility for persons with developmental disabilities under the Lanterman Act (the Act). (Welf. & Inst. Code, § 4500, et seq.) "The Act seeks to integrate developmentally disabled Californians into mainstream life and to ensure they are accorded equal access to programs receiving state funds." (*Tri-Counties Ass'n for Developmentally Disabled, Inc. v. Ventura County Public Guardian* (2021) 63 Cal.App.5th 1129, 1137; see also Welf. & Inst. Code, §§ 4501, 4502.)

3. Applicants are eligible for services under the Act if they suffer from at least one substantial developmental disability based on intellectual disability, cerebral palsy, epilepsy, ASD, or "the fifth category." (Welf. & Inst. Code, § 4512, subd. (a).) The fifth category is a disabling condition closely related to an intellectual disability or requiring treatment like that required for individuals with an intellectual disability. (*Ibid.*) A qualifying condition must start before the age of 18, continue indefinitely, and constitute a "substantial disability." (Welf. & Inst. Code, § 4512; Cal. Code Regs., tit. 17, § 54000, subd. (b).) Developmental disabilities do not include conditions where the applicant is impaired solely because of a psychiatric disorder; a learning disability; or a physical disability caused by disease, accident, or faulty development not associated with neurological impairment. (Cal. Code Regs., tit. 17, § 54000, subd. (c).)

4. Regulations define a "substantial disability" as:

(1) A condition which results in major impairment of cognitive and/or social functioning, representing sufficient

impairment to require interdisciplinary planning and coordination of special or generic services to assist the individual in achieving maximum potential; and

(2) The existence of significant functional limitations, as determined by the regional center, in three or more of the following areas of major life activity, as appropriate to the person's age:

(A) Receptive and expressive language;

(B) Learning;

(C) Self-care;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency.

(Cal. Code Regs., tit. 17, § 54001, subd. (a).)

5. "Any person believed to have a developmental disability ... shall be eligible for initial intake and assessment services in the regional centers." (Welf. & Inst. Code, § 4642, subd. (a)(1).) Intake "shall include, but need not be limited to, information and advice about the nature and availability of services provided by the regional center and by other agencies in the community, including guardianship, conservatorship, income maintenance, mental health, housing, education, work activity

and vocational training, medical, dental, recreational, and other services or programs that may be useful to persons with developmental disabilities or their families. Intake shall also include a decision to provide assessment.” (*Id.* at subd. (a)(2).)

6. If an applicant qualifies for an assessment, the assessment shall take place within 120 days following initial intake. (Welf. & Inst. Code, § 4643, subd. (a).) Assessment may include collecting and reviewing available historical diagnostic data, providing or procuring necessary tests and evaluations, and summarizing developmental levels and service needs. (*Ibid.*) In determining if an individual meets the definition of developmental disability, the regional center may consider evaluations and tests, including intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations. (*Id.* at subd. (b).) Any individual found to be ineligible for regional center services may appeal the decision under Welfare and Institutions Code sections 4700 through 4716. (Cal. Code Regs., tit. 17, § 54010, subd. (c).)

7. As set forth in the Factual Findings, claimant’s mother did not show that claimant had a qualifying developmental disability before age 18. Consequently, she did not establish that claimant qualifies for services from CVRC under the Lanterman Act. Claimant’s appeal must therefore be denied.

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## **ORDER**

Claimant's appeal is denied. Central Valley Regional Center's denial of services to claimant under the Lanterman Act is SUSTAINED.

DATE: September 8, 2023

JESSICA WALL

Administrative Law Judge

Office of Administrative Hearings

## **NOTICE**

This is the final administrative decision. Each party is bound by this decision. Either party may request a reconsideration pursuant to subdivision (b) of Welfare and Institutions Code section 4713 within 15 days of receiving the decision, or appeal the decision to a court of competent jurisdiction within 180 days of receiving the final decision.